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7 UNITED STATES DISTRICT COURT  
8 SOUTHERN DISTRICT OF CALIFORNIA  
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10 DAVID H. BROWN,

11 Plaintiff,

12 v.

13 UNITED STATES OF AMERICA,

14 Defendant.  
15

Case No. 09-CV-1453W (BLM)

**ORDER GRANTING  
DEFENDANT'S MOTION FOR  
JUDGMENT ON THE  
PLEADINGS [DOC. 13]**

16 On July 6, 2009, Plaintiff David H. Brown commenced this action claiming  
17 deprivation of property without due process of law, and requesting a writ of mandamus  
18 compelling Defendant United States of America to return seized property. On February  
19 26, 2010, Defendant filed a motion for judgment on the pleadings under Federal Rules  
20 of Civil Procedure 12(c). (Doc. 13.)

21 The Court decides the matter on the papers submitted without oral argument.  
22 See Civil Local Rule 7.1(d.1). For the reasons outlined below, the Court **GRANT** the  
23 motion for judgment on the pleadings.  
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25 **I. BACKGROUND**

26 On January 21, 2009, Plaintiff returned to the United States from Mexico with  
27 a cooler containing 26 5mg vials of Humatrope, an FDA approved human growth  
28

1 hormone. (*Compl.* [Doc. 1<sup>1</sup>], 2:9) In response to an inquiry by a border agent at the  
 2 Otay Mesa Port of Entry, Plaintiff disclosed the Humatrope and provided a valid  
 3 prescription written by a U.S. doctor. (*Id.*) United States Customs and Border  
 4 Protection (“USCBP”) determined Plaintiff was in violation of federal law and  
 5 subsequently seized the Humatrope, as well as Plaintiff’s 2004 Jeep Cherokee pursuant  
 6 to 19 U.S.C. § 1497, Penalties for Failure to Declare; and 19 U.S.C. § 1595, Searches  
 7 and Seizures. (*Id.* at 2:20; see also *Answer* [Doc. 3], 2:8.)

8 Shortly thereafter, Plaintiff waived his right to seek administrative review and  
 9 requested that USCBP promptly refer his case to the U.S. Attorney for institution of  
 10 judicial proceedings as required by 19 C.F.R. § 162.31 (2010). (*Opp. to MFJ* [Doc. 15],  
 11 3:22.) Plaintiff alleges that, Defendant has taken no such action, and provided no  
 12 explanation for the delay. (*Compl.* at 3:6.) On July 6, 2009, Plaintiff filed this lawsuit  
 13 alleging deprivation of property without due process of law, and requesting a writ of  
 14 mandamus to compel the Defendant to return the seized property. On February 26,  
 15 2010, Defendant filed a motion for judgment on the pleadings.

## 16 17 **II. LEGAL STANDARD**

18 “After the pleadings are closed but within such time as not to delay the trial, any  
 19 party may move for judgment on the pleadings.” Fed. R. Civ. P. 12(c). Judgment on the  
 20 pleadings is proper when, taking all the allegations in the pleadings as true, the moving  
 21 party is entitled to judgment as a matter of law. Fajardo v. County of Los Angeles, 179  
 22 F.3d 698, 699 (9th Cir. 1999). A district court may grant judgment to a defendant only  
 23 when it is “beyond doubt that the plaintiff can prove no set of facts in support of his  
 24 claim which would entitle him to relief.” Enron Oil Trading & Transp. Co. V. Walbrook  
 25 Ins. Co., 132 F.3d 526, 529 (9th Cir. 1997) (citations omitted).

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<sup>1</sup>All Docket references refer to Case No. 09-CV-1453W (BLM)

1 **III. DISCUSSION**

2 Defendant argues that sovereign immunity shields the United States from  
3 Plaintiff's constitutional tort claim and, therefore, Defendant is entitled to judgment as  
4 a matter of law. The Court agrees.

5 The Supreme Court has long held that the United States may not be sued without  
6 its consent, and the existence of consent is a prerequisite for jurisdiction. United States  
7 v. Mitchell, 463 U.S. 206, 212 (1983); see also United States v. Sherwood, 312 U.S.  
8 584, 586 (1941). Absent a waiver, sovereign immunity "shields the Federal Government  
9 and its agencies from suit." F.D.I.C. v. Meyer, 510 U.S. 471, 475 (1994). Any waiver  
10 must be "unequivocally expressed" and any limitations upon the waiver must be "strictly  
11 observed and exceptions thereto are not to be implied." Lehman v. Nakshian, 453 U.S.  
12 156, 160 (1981).

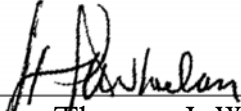
13 In the present case, Plaintiff has named only the United States as Defendant, and  
14 has failed to name any individual actors acting in their official capacity. Because  
15 Plaintiff has not identified an "unequivocal" waiver by the United States, Plaintiff's  
16 constitutional tort claim against the United States for deprivation of property without  
17 due process are currently bared by Defendant's sovereign immunity.

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19 **VI. CONCLUSION**

20 In light of the foregoing, the Court **GRANTS** the motion for judgment on the  
21 pleadings with leave to amend.

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23 **IT IS SO ORDERED.**

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25 DATED: July 6, 2010

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28 Hon. Thomas J. Whelan  
United States District Judge